

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

June 24, 2004

GSBCA 16402-RELO

In the Matter of SHARON A. THOMPSON

Sharon A. Thompson, Lake Park, GA, Claimant.

Joseph M. Zima, Office of the Staff Judge Advocate, Department of the Army,
Fort Bragg, NC, appearing for Department of the Army.

PARKER, Board Judge.

Background

On May 17, 2000, a few days before leaving Fort Bragg, North Carolina, for her new duty station in Incirlik Air Base, Turkey, Sharon Thompson was informed by a Department of the Army official that she did not have the right to return to Fort Bragg after her tour of duty in Turkey. This came as a surprise to Ms. Thompson, who up until that time, was under the impression that she would be returning to Fort Bragg.

In August 2001, Ms. Thompson sold her house in Fayetteville, North Carolina, near Fort Bragg. By orders dated May 22, 2002, Ms. Thompson was transferred from Incirlik Air Base to Hanscom Air Force Base, Massachusetts.

The Army denied Ms. Thompson's claim for reimbursement of the expenses incurred in selling her residence in Fayetteville because the sale occurred before Ms. Thompson was officially notified that she would not be returning to Fayetteville. Ms. Thompson has asked the Board to review the Army's decision.

Discussion

The Army was correct in denying Ms. Thompson's claim for real estate expenses. The federal statute that governs Ms. Thompson's claim provides that when an agency transfers an employee from a duty station within the United States to a duty station outside the United States and then back to the United States, the agency can reimburse the employee for the expenses of selling a house at the first duty station in the United States only if the sale

occurs after the employee receives official notification that he will not return to that duty station. 5 U.S.C. § 5724a(d)(2), (3) (2000). The Joint Travel Regulations (JTR) are consistent with the statute. JTR C14000-C, -D. We have discussed these statutory and regulatory requirements many times and applied them to employees whose circumstances were similar to those of Ms. Thompson. Karl H. Uebersohn, GSBCA 16105-RELO, 03-2 BCA ¶ 32,332; Edward J. Nanartowich, GSBCA 15237-RELO, 01-1 BCA ¶ 31,290.

The law is clear that the Army is not authorized to reimburse Ms. Thompson for the expenses she incurred when she sold her house in Fayetteville because she sold the house before she received official notification that she would not return to Fayetteville. According to the JTR, such official notification usually takes the form of permanent change of station orders. JTR C14000-C.4, -D.2. When Ms. Thompson sold her house in Fayetteville, the Army had not issued any permanent change of station orders telling her that she would not return there. Although the Army told Ms. Thompson that she did not have return rights to Fayetteville, the lack of return rights does not constitute official notification that the employee will not return to his former duty station because there is a chance that the employee will be able to return there at the conclusion of the overseas tour of duty. Uebersohn; Mark H. Swenson, GSBCA 15504-RELO, 01-1 BCA ¶ 31,410. When Ms. Thompson sold her house, the Army did not tell her where she might be posted after Turkey, much less provide her with official notification that she would not return to Fayetteville. Thus, according to the statute and the regulations, the Army has no authority to reimburse Ms. Thompson for her real estate transaction expenses.

The fact that this rule was not clearly explained to Ms. Thompson, while unfortunate, does not affect her right to reimbursement. It is well-settled that failure by Government officials to adequately explain travel and relocation related issues cannot create a right to reimbursement in excess of statutory and regulatory entitlements. David Kallman, GSBCA 15671-RELO, 03-1 BCA ¶ 32,118 (2002).

ROBERT W. PARKER
Board Judge